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In re Patent No. 6,801,425 :  
Issued: October 5, 2004 :  
Application No. 09/873,468 : PATENT TERM ADJUSTMENT  
Filed: June 4, 2001 :  
Atty. Dkt. No.: 0275L-000453 :

**OFFICE OF PETITIONS**

This is a decision on the "PETITION TO REQUEST RECONSIDERATION OF PATENT TERM ADJUSTMENT CALCULATION PURSUANT TO 37 CFR 1.705," filed October 22, 2004. This matter is being properly treated as a timely filed application for patent term adjustment under 37 CFR 1.704(d).

The application for patent term adjustment ("PTA") under 37 CFR 1.705(d) is **GRANTED TO THE EXTENT INDICATED HEREIN.**

Applicants have two months to reply to the decision. No extensions of time under 37 CFR 1.136 will be granted.

The above-identified application matured into U.S. Patent No. 6,801,425 on October 5, 2004. The patent issued with an adjustment of 48 days. Applicants herein argue that the patent term adjustment was improperly reduced 83 days in connection with a submission on July 15, 2004.

A review of the application history reveals that an adjustment of 237 days can be attributed to the Office<sup>1</sup>.

<sup>1</sup> An adjustment of 163 days in accordance with 37 CFR 1.702(a)(1) can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. The adjustment began August 5, 2002, the day after the date that is 14 months after the date that the application was filed, and ended January 14, 2003, the date the non-final Office action was mailed. See, 37 CFR 1.703(a)(1). A further adjustment of 74 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(2) for failure to respond not later than four months after the date on which a reply was filed or the appeal was taken. The adjustment began February 3, 2004, the day after the date that is four months after the date that the Appeal Brief was filed, and ended April 16, 2004, the date the Notice of Allowance was mailed.

The adjustment of 237 days is properly reduced a total of 162 days in accordance with 37 CFR 1.704 for applicants' failure to engage in reasonable efforts to conclude prosecution<sup>2</sup>.

The Office errantly reduced the adjustment 83 days in connection with the "COMMENTS ON STATEMENTS OF REASONS FOR ALLOWANCE" submitted July 15, 2004. As argued by applicants, the Office has found that papers related to comments on the examiner's statement of reasons for allowance do not constitute failures to engage in reasonable efforts to conclude prosecution. See, MPEP 2732 and 1247 Off. Gaz. Pat. Off. 111 (June 26, 2001). However, the reduction for the submission of drawings has been increased from 64 days to 120 days because the two reductions no longer have overlapping periods of reduction.

Therefore, at the time of issuance, the patent was entitled to an adjustment of 237 days. The adjustment, however, is properly reduced 162 days for applicants' failure to engage in reasonable efforts to conclude prosecution, resulting in an overall adjustment of 75 days.

The PTA indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of 75 days.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 75 days.

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<sup>2</sup> The adjustment of 237 days is reduced 14 days in accordance with 37 CFR 1.704(c)(8) in connection with the IDS submitted March 10, 2003. The reduction began February 25, 2003, the day after the date that the response to the non-final Office action was filed, and ended March 10, 2003, the date that the supplemental response (IDS) was filed. The adjustment of 237 days is further reduced 27 days in accordance with in connection with the Notice of Appeal filed July 30, 2003 in accordance with 37 CFR 1.704(b). The reduction began July 4, 2003, the day after the date that is three months after the date that the final Office action was mailed, and ended July 30, 2003, the date the Notice of Appeal was filed. The adjustment of 237 days is further reduced one day in accordance with 37 CFR 1.704(c)(8) in connection with the IDS filed October 3, 2003. The reduction began October 3, 2003, the day after the date that an initial response (appeal brief) was filed, and ended October 3, 2003, the date the IDS was filed. The adjustment of 237 days is further reduced 120 days, the maximum period of reduction allowed by law, in accordance with 37 CFR 1.704(c)(10) in connection with the drawings submitted May 12, 2004. The submission of drawings after a Notice of Allowance has been mailed is deemed a failure to engage in reasonable efforts to conclude prosecution within the meaning of 37 CFR 1.704(c)(10). See, MPEP 2732 and 1247 Off. Gaz. Pat. Office 111 (June 26, 2001).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

*Kery Fries*

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CC: Draft Certificate of Correction